

ORIGINAL

DOCKET FILE COPY ORIGINAL

RECEIVED

FEB 13 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Assessment and Collection) MM Docket No. 95-3
of Regulatory Fees for)
Fiscal Year 1995)

To the Commission:

JOINT COMMENTS OF CABLEVISION
INDUSTRIES CORP., MULTIMEDIA CABLEVISION, INC.,
PROVIDENCE JOURNAL COMPANY AND STAR CABLE ASSOCIATES

Cablevision Industries Corp., Multimedia Cablevision, Inc., Providence Journal Company,¹ and Star Cable Associates, ("Cable Companies"), by their attorneys, hereby submit their Joint Comments in response to the above-captioned Notice of Proposed Rulemaking to assess and collect regulatory fees for fiscal year 1995 (the "NPRM").² Each of the Cable Companies owns, operates and manages cable television systems and, accordingly, will be directly affected by the outcome of this proceeding.

The focus of these Comments is the drastic and unexpected increase proposed in the annual regulatory fee for

¹ Providence Journal Company conducts its cable television operations through Colony Communications, Inc., King Videocable Company, Colony Cablevision and Copley/Colony, Inc.

² Assessment and Collection of Regulatory Fees for Fiscal Year 1995, FCC 95-14 (Notice of Proposed Rulemaking, released Jan. 12, 1995) [hereinafter 1995 NPRM].

No. of Copies rec'd
List ABCDE

CA4

small receive-only earth stations. In the Commission's 1994 regulatory fee schedule, the annual payment for such stations was only \$6.00 per 100 stations. The proposed schedule would increase this payment to \$120 per meter per dish.

The Cable Companies all have multiple registered dishes, which they use to receive the majority of the programming networks they deliver to their subscribers. Typically, these dishes are either 4.5 or 5.2 meters in diameter. Thus, in many cases, the proposal will result in the fee per dish jumping from a few cents to over \$500. For a company that has 100 registered dishes, the total payment will increase from just six dollars to almost \$60,000 dollars.³

The Companies urge the Commission to reconsider the proposal in question because imposing such a huge adjustment on one particular group of users seems contrary to both the underlying purpose of the fees and the permissible bases for making fee adjustments. In addition, the change poses a major, unexpected burden that falls especially harshly on operators that have a large number of headends serving small numbers of subscribers.

Purpose of Fees and Criteria for Adjustments: The magnitude of the proposed adjustment in the small earth station fee has caused the Cable Companies to look carefully

³ This assumes an average of 4.9 meters -- half 5.2 meter and half 4.5 meter dishes.

at the benefits they receive from the Commission in connection with this service. In May 1991 the Commission replaced the licensing scheme for receive-only earth stations with a simple, self-effectuating registration system that covers new licenses, renewals and ownership changes alike.⁴ Today, receive-only earth stations clearly are a service in which the Commission's regulatory and administrative functions are very minimal and are defrayed in part by filing fees.

The original Notice of Proposed Rulemaking preceding the implementation of the FY 1994 fee schedule cites Congress' purpose in authorizing the Commission to assess and collect annual regulatory fees: "to recover costs incurred in carrying out its enforcement activities, policy and rulemaking activities...." Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, 9 FCC Rcd 6957, 6958 (Notice of Proposed Rulemaking, released Mar. 11, 1994). In doing so, the Commission looks at the various categories of facilities it regulates individually. The Cable Companies urge the Commission to reexamine the appropriateness of its overall allocation of Commission costs to receive-only earth

⁴ Amendment of Part 25 of the Commission's Rules and Regulations to Reduce Alien Carrier Interference Between Fixed-Satellites at Reduced Orbital Spacings and to Revise Application Processing Procedures for Satellite Communications Services, 6 FCC Rcd 2806 (First Report and Order, released May 21, 1991).

stations and whether the amount of the Commission's budget to be recovered by earth station fees truly is warranted.

The statute provides for proportionate increases or decreases in the fees for various users after FY 1994. There is no way that an increase of the magnitude in question can be viewed as "proportionate" when compared with the proposed adjustments in fees for other services. The Commission claims that it made such a dramatic adjustment to rectify a "disparity" in the FY 1994 fee schedule. Because the original disparity was established by Congress, however, the commission is without authority to make the proposed of adjustment.

Public Interest and Impact on Users: The statute also requires the Commission, in making adjustments, to consider such factors as it determines "are necessary in the public interest." 47 U.S.C.A. § 159(b)(1)(A) (1994). The proposed adjustment certainly fails to give public interest considerations adequate attention. As pointed out earlier, one class of payor -- users of small, receive-only earth stations -- will experience a marked and completely unexpected increase in annual fees.

This burden falls disproportionately on companies that serve rural areas, where a large number of separate headends are needed to reach small groups of widely disbursed residents. Star Cable Associates, for example, serves

approximately 66,000 subscribers from 56 headends, an average of just over 1,100 subscribers per headend, with the smallest serving only 79 customers. Last year Star paid a \$6.00 annual fee for its registered earth stations. Under the Commission's proposal, that payment would jump to over \$10,000 for its registered stations. If it registered a station at each of its 56 headends, the fee could exceed \$30,000. Each of the other Cable Companies has numerous small earth stations and its share of individual headends with registered stations serving small, rural communities. Multimedia has 36 licensed earth stations, one of which serves a hundred with only 102 subscribers. Cablevision Industries Corp. has 125 licensed stations, some of which also serve systems with only a few hundred subsidies each. Providence Journal Company's cable subsidiaries have 39 registered stations and some of these also are part of headends serving just a few hundred subsidies each.

Already strapped from the effects of rate regulation, the Cable Companies now must come up with greatly increased annual regulatory fees for their earth stations, in addition to increased annual regulatory fees assessed on a per subscriber basis. Even though the annual regulatory fee can be passed through to subscribers as an external cost, there is a limit to the amount that can be added onto subscriber bills due to customer relations considerations and emerging

competition from distributors who are not subject to comparable regulatory fees.⁵

Faced with the prospect of dealing with another significant regulatory cost, the Cable Companies urge the Commission to review its proposal carefully. It seems that there should be a better way for the Commission to fulfill its obligations under the Budget Act than subjecting one particular type of license and one already hard-pressed group of users to a disproportionately burdensome increase.

Respectfully submitted,

CABLEVISION INDUSTRIES CORP.,
MULTIMEDIA CABLEVISION, INC.,
PROVIDENCE JOURNAL COMPANY AND
STAR CABLE ASSOCIATES

By: Donna C. Gregg / MKB
Donna C. Gregg
Their Attorney

Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

⁵ External cost treatment of regulatory fees for receive-only earth stations is not directly addressed in the Commission's rules and pronouncements. The Commission has, however, stated that annual fees for CARS microwave stations, which cable systems also use quite frequently, cannot be passed through to subscribers. Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, 9 FCC Rcd 5795, 5797n.35 (Fourth Order on Reconsideration, 1994).